

GLOSSARY OF TERMS

BANKRUPTCY

Abandonment: Process by which the debtor's estate would not benefit by the sale of certain property so the trustee will turn it back over to the debtor.

Abandonment of property: Trustee's declaration that the trustee has no interest in certain property because of lack of value, debtor's exemption, or because it is burdensome to the administration of the estate.

Absolute priority rule: Requirement that a certain class of creditors be satisfied before payment to another class of creditors.

Acceleration clause: A clause in a promissory note allowing the creditor to declare the entire balance due upon default.

Adequate protection: The standard of protection of the interest of a creditor which must be provided by the trustee or debtor in possession before the creditor's interest can be used without an unconstitutional taking of the creditor's interest.

Administrative claim: Claims for reasonable and necessary expenses and fees incurred in the administration of an estate.

Adversary proceeding: A lawsuit in the U.S. Bankruptcy Court that is related to a bankruptcy case.

Affidavit: A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths.

Affiliate: (1) Entity with voting power that directly or indirectly owns 20% of debtor's voting securities; (2) Corporation in which the debtor owns 20% of voting securities; (3) Person whose business is operated under debtor's lease or operating agreement; or (4) Entity that operates the business or property of the debtor under a lease or operating agreement.

Affirmation: A declaration, oath or promise made by a person.

Agent: A person who is authorized to represent another person, corporation or entity.

Amortize: To satisfy a debt in installments or recovery of an investment over a period of time.

Answer: The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for defense.

Appeal: A review by a higher court of the judgment or decision of a lower court.

Appellant: Party who files the appeal.

Appellee: Party to whom the appeal is filed against.

Assets: The property or effects of a debtor, applicable to the payment of his debt.

Automatic stay provision: Goes into effect the minute a bankruptcy case is filed; stops most creditors from suing or foreclosing against a debtor without prior permission of the bankruptcy court.

Avoidance powers: The powers used by a trustee to undo transfers of the debtor's property.

Balance sheet: A statement of financial condition as of a specific date.

Ballot: The method by which a creditor may vote to accept or reject the debtor's plan for reorganization.

Bankruptcy: A complex, technical area of the law; applies to individuals or businesses that are unable to pay their bills as they come due, or for whom paying their bills is no longer realistic.

Bankruptcy administrators: Handle administrative matters in bankruptcy cases in Alabama and North Carolina; appointed by the U.S. Court of Appeals; take the place of U.S. trustees. *Compare with U.S. trustees.*

Bankruptcy appellate panels (BAPS): In the circuits that have them, BAPs share the appellate role of the district court in bankruptcy filings; composed of three bankruptcy judges.

Bankruptcy Code: Title 11 of the U.S. Code; governs bankruptcy proceedings.

Bankruptcy estate: Those of the debtor's assets (money or property) that, unless exempt, must be used to pay creditors.

Bankruptcy Reform Act of 1978; Bankruptcy Amendments and Judgeship Act of 1984: Two federal laws that set out the organization and jurisdiction of the bankruptcy system.

Bar date: Date set by the court for filing objections to pleadings.

Bench trial: Trial without a jury in which a judge decides the facts.

Brief: A written statement submitted by the lawyer for each side in a case that explains to the judges why they should decide the case or a particular part of a case in favor of that lawyer's client.

Case administrator system: A method of organizing work in the clerk's office; one deputy clerk or a team of employees handles all the steps in a single case from start to finish.

Case law: The law as laid down in cases that have been decided in the decisions of the courts.

Change of venue: Moving the case from the jurisdiction of one bankruptcy court to another.

Chief Judge: The judge who has primary responsibility for the administration of a court but also decides cases; chief judges are determined by seniority.

Claim: Creditor's right to payment.

Claims bar date: Last day to file proof of claim, usually 90 days after the section 341(a) meeting of creditors.

Clerk of Court: An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

Complaint: A pleading that is filed to initiate a lawsuit or adversary proceeding.

Confirmation: The court's approval of the debtor's plan before it goes into effect.

Consumer debt: Debt incurred by an individual primarily for a personal, family or household purpose.

Contract: An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

Conversion: Changing from any chapter of bankruptcy to another.

Core proceedings: Core proceedings are directly related to the bankruptcy case that arises under the Bankruptcy Code. Core proceedings include estate administration, claim allowance or disallowance, use and sale of property, preference litigation, automatic stay litigation, fraudulent conveyance litigation, plan confirmation and the like. A bankruptcy judge may render final orders in core proceedings.

Counsel: Legal advice; a term used to refer to lawyers in a case.

Court: Government entity authorized to resolve legal disputes. Judges sometimes use “court” to refer to themselves in the third person, as in “the court has read the briefs.”

Court reporter: A person who makes a word for word record of what is said in court and produces a transcript of the proceedings upon request.

Creditor: A person, business, or other entity, such as a government agency, to whom a debtor owes money; can be any entity or any person; for example, a savings and loan institution, credit card company, or employee who loses a paycheck if a business goes bankrupt.

Creditors Committee: In a Chapter 11 case, a group of 7 to 10 unsecured creditors (excluding insiders) are appointed to a committee to keep apprised of the bankruptcy case and advise other creditors of the happenings.

Debt: Liability for a claim.

Debtor: A person or business that owes money to another person or business.

Debtor-in-possession: The management of a business in a Chapter 11 reorganization that continues to operate and control the debtor after the petition is filed, unless the court orders otherwise.

Default judgment: A judgment rendered because of the defendant’s failure to answer or appear.

Defendant: In an Adversary Proceeding, the person complained against; in a criminal case, the person accused of the crime.

Deposition: An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

Discharge: A legal device that prevents creditors from trying to collect prebankruptcy debts from debtors after a bankruptcy is over.

Disclosure statement: Gives creditors in Chapter 11 reorganization information to use in deciding whether to vote to accept or reject a plan of reorganization.

Discovery: Lawyers’ examination, before trial, of facts and documents in possession of the opponents to help the lawyers prepare for trial.

Dismissal: Process by which a court will terminate a case. **With Prejudice** – cannot refile. **Without Prejudice**- can refile at a later date.

Distribution: Process under a plan of reorganization wherein proceeds of an estate are paid to various classes of claimants.

Dividend: Payment a creditor receives from a debtor's estate.

Docket: A log containing brief entries of court proceedings.

En banc: "In the bench" or "full bench." Refers to court sessions with the entire membership of a court participating rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases. They are then said to be sitting en banc.

Evidence: Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

Exclusivity period: The time during which only the debtor in a Chapter 11 reorganization can propose a plan or reorganization; generally at least the first 120 days after filing.

Exempt property: Property of a debtor that the law protects from the action of creditors.

Exemption: Money or property that is not liquidated as part of the bankruptcy estate.

Ex Parte: An action (a conversation orally or in writing, a ruling, or a hearing) done without all parties being notified in advance or without their presence.

Family farmer: Individual and family engaged in farming operation.

Federal Rules of Bankruptcy Procedure: Govern practice and proceedings in the bankruptcy courts.

Federalism: The theory under which the powers of government are divided between the states and the central government.

Final decree: Order of the court that the case has been fully administered and is closed.

Garnishment: A judicial debt-collection procedure whereby, at the suit of a creditor, the court orders a third person to hold, subject to the court's direction, money or property of the debtor in his or her possession.

Involuntary filing: A bankruptcy case that a creditor or group of creditors initiates.

Issue: (1) The disputed point in a disagreement between parties in a lawsuit. (2) To send out officially, as in to issue an order.

Joint petition: When two or more persons are listed on the same bankruptcy petition, e.g., husband and wife.

Judge: Government official with authority to decide lawsuits brought before courts. Other judicial officers in the U.S. courts system are Supreme Court justices.

Judgment: The official decision of a court finally determining the respective rights and claims of the parties to a suit.

Judicial lien: A lien created by order of a court, such as the lien of a judgment.

Jurisdiction: (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. (2) The geographic area over which the court has authority to decide cases.

Jurisprudence: The study of law and the structure of the legal system.

Liabilities: Debts of the debtor and encumbrances on the debtor's property.

Lien: An interest in property securing the repayment of a debt.

Liquidation: A type of bankruptcy filing; the debtor gives up most of its assets in return for not having to pay most of its debts; the more traditional bankruptcy alternative.

Local bankruptcy rules: Govern practice and proceedings in a specific bankruptcy court.

Matrix: List of creditors' names and addresses, filed with the petition.

Net income: Debtor's income after expenses is deducted.

Net worth: The remainder after deducting liabilities from assets.

Nonexempt property: Property that the debtor may not keep.

Opinion: A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and /or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment.

Plaintiff: The person who files a complaint in an adversary proceeding.

Plan of reorganization: Sets out how a debtor in Chapter 11 reorganization proposes to repay its creditors.

Pretrial Conference: Scheduling conference at which trial, motion cut-off, and other dates are set.

Pro se: A nonlawyer who represents himself or herself in a court proceeding.

Reorganization: A type of bankruptcy filing; the debtor gets to keep most, if not all, of its assets but has to pay all or some specified part of its debts according to a plan of reorganization.

Secured creditor: A creditor whose debt is secured by a lien on debtor's property.

Standing trustee: A trustee with a permanent appointment to serve in Chapter 12 or 13 cases.

Statue of limitations: A law that sets the time within which parties must take action to enforce their rights.

Straight bankruptcy: Proceedings under Chapter 7.

Subpoena: A command to a witness to appear and give testimony.

Summary judgment: A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgment as a matter of law.

Unsecured creditor: A creditor without security for the debt.

U.S. trustees: Supervise the administration of bankruptcy cases and trustee; relieve bankruptcy judges of routine administrative matters, such as appointing case trustees, naming creditors' committee members, and conducting meetings of creditors; appointed by the Attorney General of the United States for five-year terms.

Venue: The geographical location in which a case is tried.

Voluntary filing: A bankruptcy case that the debtor initiates.

Writ: Authority to carry out or to act.

Workout: Arrangement between debtor and creditor to satisfy a debt.